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TRREB defeats plaintiff's motion to restore MLS access (*Ojohome Canada Ltd. v. The Canadian Real Estate Association*)

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In *Ojohome Canada Ltd. v. The Canadian Real Estate Association*, [2025 ONSC 1601](#), the Ontario Superior Court of Justice dismissed a motion brought by the plaintiff to regain access to live feed data from the Multiple Listing Services (MLS) provided by Toronto Regional Real Estate Board (TRREB) and the Canadian Real Estate Association (CREA).

Under agreements with TRREB and CREA, the plaintiff obtained current data feeds from the Toronto Region from TRREB via the MLS data feed (known as the "IDX") and the Canada-wide feed from CREA (known as the "DDF"), which in turn permitted interested home buyers to conduct searches for properties on the plaintiff's web site.

The plaintiff did not list or sell homes. Rather, the plaintiff's web site generated revenue by making referrals to a network of real estate agents and mortgage brokers. Agents retained in this manner paid a fee of 25% on the agent's share of commission to the plaintiff on a successfully completed sale. No fee was charged to the consumer or the agent if

a sale was not completed. The plaintiff generated 80% of its revenue from sales referrals and 20% of its revenue from mortgage referrals.

The dispute dated back to 2021 when the plaintiff was first denied access to the IDX. Under TRREB's rules, IDX data may only be used for the purpose of carrying on the business of "a bona fide trade in real estate in Ontario" for a consumer with whom the subscribing member has a "lawful broker-consumer relationship". TRREB's position was that the plaintiff's business was not compliant with their IDX agreement because the plaintiff did not contribute data to the IDX but was only seeking to monetize the data it obtained via the IDX.

TRREB's evidence was that the plaintiff's in-house counsel advised in 2021 that the plaintiff intended to become compliant with TRREB's rules, but it never did so.

What happened instead, TRREB argued, was that the plaintiff improperly regained access to the IDX through subterfuge by using a different name and web address

to subscribe while failing to advise staff at TRREB of the prior dispute.

In October 2024, TRREB terminated the plaintiff's access to the IDX. In December 2024, CREA took steps to restrict the DDF feed to the plaintiff so as to exclude the TRREB data. This effectively reduced the listings on the plaintiff's web site from around 54,000 homes to 11,500 postings derived from other real estate boards outside of the Toronto region. The plaintiff was blocked from displaying data relating to most listings in the GTA.

The plaintiff subsequently brought a motion against TRREB and CREA seeking an interlocutory injunction or mandatory order to restore its access to the MLS data feeds from TRREB and CREA until the dispute could be adjudicated. The plaintiff denied that its business was non-compliant with TRREB's rules and disputed TRREB's interpretation of the TRREB's by-laws and IDX agreement. The plaintiff denied any subterfuge and argued that its services provided value to consumers and sales agents.

The motion decision turned on the applicable test for an interlocutory injunction or mandatory order set by the Supreme Court of Canada in *RJR — MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#), [1994] 1 S.C.R. 311: (1) whether the plaintiff has presented a serious issue to be tried or, in some cases, a strong *prima facie* case; (2) whether the plaintiff would suffer irreparable harm if the relief sought was left to be granted at trial; and (3) where does the balance of convenience or inconvenience lie in the granting or the refusing to grant the interlocutory injunction.

The higher threshold of showing a strong *prima facie* case is required where the outcome of the interlocutory injunction will make proceeding to trial pointless for one party or when the plaintiff's

right can be exercised only immediately or not at all: *LivingArt Kitchens Inc. v. Merenich*, [2024 ONSC 3088](#), at paragraph 77.

The plaintiff argued that restoration of the IDX data feed was a simple low cost matter which imposed little or no burden on TRREB in contrast to the damage being inflicted on its business, which was allegedly irreparable.

In response, TRREB argued that the plaintiff was seeking a mandatory order which required it to show a strong *prima facie* case. TRREB argued that the plaintiff had not met this threshold based on the clear wording of the applicable agreements and the fact that TRREB was not obligated to provide access to any data except on its own terms. TRREB's position was that it needed to protect the integrity of the system for the benefit of all its members and participants in the IDX data feed program.

CREA took no position on the merits of the dispute but argued that it should not be subject to a mandatory order since it would restore the TRREB IDX data in the DDF if the court ordered TRREB to restore the IDX data feed.

The motion judge agreed with TRREB that the order sought by the plaintiff requiring it to restore service required the plaintiff to meet a strong *prima facie* case for a mandatory order of "almost certain to succeed", and that this hurdle was not met based on the evidence.

Further, the motion judge concluded that even if the lower threshold of showing only a genuine issue applied, then the plaintiff's motion for an injunction failed on the second branch of the test requiring it to show irreparable harm.

To establish "irreparable harm," the party seeking the injunction must clearly establish that



damages awarded after a trial would not provide an appropriate remedy. If damages or some other trial remedy would come too late or be inadequate to repair the harm or be insufficient to do justice, then the harm may be said to be irreparable:

LivingArt Kitchens Inc. v. Merenich, [2024 ONSC 3088](#), at paragraph [80](#). Mere difficulty in calculating damages for lost business is not sufficient to establish irreparable harm.

The plaintiff and TRREB each claimed irreparable harm to their reputation and business model. However, the motion judge was not satisfied that irreparable harm was established by either party. In the motion judge's view, the parties were commercial entities engaged in a commercial contract dispute and damages appeared to be an adequate remedy for any breach thereof.

Furthermore, the motion judge noted that the plaintiff could take steps to mitigate its damages before trial and could take steps to come into compliance with the TRREB rules.

Lastly, the motion judge reasoned that even if restoring the IDX data feed would impose little burden on TRREB, that alone did not justify injunctive relief given the failure of the plaintiff to meet the other prongs of the test for injunctive relief.

The brokerage's motion was [dismissed](#) and the proceedings will continue in the ordinary course.

Contact us

If you have a litigation matter and are in need of legal advice, please contact [James Cook](#), at 416.865.6628 or jcook@grllp.com.

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